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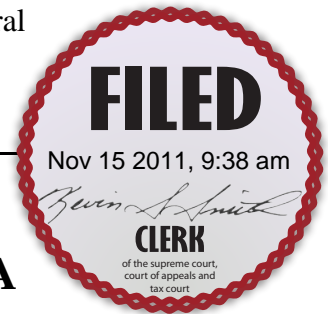
ATTORNEY FOR APPELLANT:

THOMAS W. VANES
Office of the Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

IAN McLEAN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

GREGORY BROOKS, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-1012-CR-766

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0910-MR-10

November 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Eighteen-year-old Gregory Brooks and Reo Thompson forcefully entered the home of Milton and Ruby McClendon. They confined the elderly couple in separate rooms, stole items from their home, and drove off in the McClendons' car. Because the McClendons had seen their faces, Brooks and Thompson returned to the McClendons' home, forced them in the trunk of the car, drove them to a remote location, and murdered them. Brooks was charged with numerous felonies and pled guilty to two counts of murder in perpetration of a robbery. The trial court sentenced Brooks to sixty years on each count, to be served consecutively, for an aggregate sentence of one hundred twenty years of imprisonment.

Brooks appeals his sentence, arguing that it is inappropriate in light of his age at the time of the offense, his guilty plea, and his role in the commission of the crimes. We conclude that Brooks has failed to show that his sentence is inappropriate in light of the heinous nature of the crimes and his character. Therefore, we affirm.

Facts and Procedural History

At his guilty plea hearing, Brooks stipulated to the following facts. At approximately 10:30 p.m. on October 18, 2009, Brooks and Thompson approached the home of Milton, age seventy-eight, and Ruby, age seventy-six, in Hammond, Indiana. Brooks and Thompson had the letters "ABK," meaning "anybody killers," tattooed on their arms a few days earlier. Tr. at 101. Brooks was a member of the Gangster Disciples gang and had been since he was fourteen. Brooks had already participated in home burglaries as part of the gang.

Brooks and Thompson told Milton that they were having car trouble, and when Milton

tried to deny them entry, they forced their way inside. Thompson held the McClendons at gunpoint and asked for money and valuables. Ruby gave Thompson fifty dollars, and Thompson took the car keys from her purse. Thompson then ordered Milton at gunpoint to crawl upstairs while Brooks put Ruby in a foyer closet and blocked the closet door with a table. Brooks and Thompson searched the upstairs bedroom and recovered jewelry and a handgun. Thompson struck Milton in the head with a vase and kicked him in the head multiple times. Milton complained of dizziness and was bleeding. Milton recently had a pace maker installed.

Thompson ordered Milton to crawl downstairs, trapped him in the basement bathroom, and blocked the door with a ladder. Brooks and Thompson took cash, jewelry, a cellular telephone, and two guns from the home. They found the McClendons' 1997 Cadillac and drove off with Brooks at the wheel. Thompson told Brooks to go back to the McClendons' home because the couple had seen their faces and had to be killed.

After Brooks and Thompson returned to the McClendons' home, they ordered the McClendons to get in the trunk of their Cadillac. Brooks and Thompson drove off with the McClendons in the trunk and stopped at a gas station at approximately 1:00 a.m. Thompson went inside the gas station, and Brooks remained in the car and heard the McClendons pounding on the trunk door. Brooks and Thompson then drove and parked the car in an abandoned garage near Brooks and Thompson's residence. Thompson and Brooks left the McClendons in the trunk for some time, returned to the car, and drove to a forest preserve in Calumet City, Illinois. Brooks opened the trunk, and Thompson forced both of them out of

the trunk at gunpoint. Thompson ordered the McClendons to walk a few feet away from the car into a grassy area. Milton was shot in the right forearm, left shoulder, right upper back, and the head, resulting in his death. Ruby was fatally shot in the head.

On October 19, 2009, Brooks sold the jewelry he had stolen from the McClendons to a jewelry store for seventy dollars. On or about October 23, 2009, Brooks was arrested in Chicago and was wearing a gold bracelet taken during the robbery that had been engraved with the names of the McClendons' children and grandchildren. A watch belonging to the McClendons was also found at Brooks and Thompson's house. Brooks and Thompson had blood on their shoes consistent with Milton's DNA profile.

On October 24, 2009, the State filed a charging information against Brooks that was ultimately amended as follows: two counts of murder in the perpetration of a burglary with the intent to commit murder, two counts of murder in the perpetration of a robbery, two counts of murder in perpetration of a burglary with the intent to commit theft, one count of class A felony robbery, two counts of class A felony burglary, one count of class B felony robbery, two counts of class B felony criminal confinement, two counts of class B felony criminal confinement resulting in serious bodily injury, and one count of class D felony auto theft.

On October 14, 2010, pursuant to a written plea agreement, Brooks pled guilty to two counts of murder in the perpetration of a robbery, and the remaining charges were dropped. Sentencing was left to the trial court's discretion.

At Brooks's sentencing hearing on November 16, 2010, the trial court cited Brooks's

young age, expression of remorse, guilty plea, and lack of history of delinquency as mitigating circumstances. The trial court listed under its findings of significant aggravating circumstances the ages of the victims, the fact that there were multiple victims, and Brooks's continued gang membership. Additionally, the court emphasized the "cold-blooded and heinous" nature of the crimes, stating that the victims were "humiliated, tortured, and made to suffer for hours at the hands of the defendants prior to being executed" and that the crimes were "committed in a hateful and shockingly evil manner." Appellant's App. at 118. The court also noted that the defendants "acted in consort [sic]," Tr. at 189, and that it considered both defendants to be "equally culpable." Appellant's App. at 117. The trial court found the aggravating factors to outweigh the mitigating factors and sentenced Brooks to sixty years of imprisonment on each count, to be served consecutively, for an aggregate term of one hundred twenty years. This appeal ensued.

Discussion and Decision

Brooks contends that his sentence is inappropriate. Although the trial court "may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution 'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)) *clarified on reh'g*, 875 N.E.2d 218. This authority to review sentences is implemented by Indiana Appellate Rule 7(B), which states that the appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in

light of the nature of the offense and the character of the offender.” Whether a sentence is appropriate turns on the court’s “sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Brooks bears the burden of persuading us that his sentence was inappropriate. *Anglemeyer*, 868 N.E.2d at 494.

“[R]egarding the nature of the offense, the advisory sentence is the starting point our Legislature has selected as an appropriate sentence for the crime committed.” *Id.* Indiana Code Section 35-50-2-3(a) lists a sentencing range of forty-five to sixty-five years with an advisory sentence of fifty five years for murder. Brooks properly concedes that the crimes that he committed were heinous. The victims were elderly and helpless and were threatened, robbed, separated, and confined in their own home. Brooks and Thompson then returned to the McClendons’ home, forced them into the trunk of a car for an extended duration, ignored their pounding on the trunk door for help, and then executed them in a field. Brooks also does not challenge the consecutive sentencing, given that this case involves multiple victims. *See Pittman v. State*, 885 N.E.2d 1246, 1259 (Ind. 2008) (“Consecutive sentences reflect the significance of multiple victims.”) Rather, Brooks argues that the sentence is inappropriate in light of his character, specifically focusing on his guilty plea, his young age at the time of the crimes, and his role in the crimes. We address each in turn.

A. Guilty Plea

Brooks claims that his guilty plea reflects favorably on his character because it indicates an acceptance of responsibility and spared the McClendon family the pain of trial.

A guilty plea “is not necessarily a mitigating factor.” *Payne v. State*, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005) (quoting *Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004)). The Indiana Supreme Court has held that although a defendant who pleads guilty deserves some mitigating weight be given to the plea in return, the significance of a guilty plea as a mitigating factor varies from case to case. *Anglemyer*, 875 N.E.2d at 221. For example, “a guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea.” *Id.* (citation omitted). Although Brooks expressed remorse for his crimes at his sentencing hearing, he also received the substantial benefit of having the numerous other charges dropped, and the evidence against Brooks, as the trial court properly noted, was overwhelming. Also, Brooks did not plead guilty until almost one year after his arrest, thus forcing the State to expend time and resources in the interim. Additionally, Brooks has consistently argued relative culpability, claiming that Thompson committed the more violent acts and that his own role was “secondary.” Appellant’s Br. at 8. Although Brooks does not claim that he is completely free from culpability, his emphasis on Thompson being more culpable cuts against his argument that his guilty plea demonstrates an acceptance of responsibility for the crimes. Therefore, Brooks’s guilty plea does not reflect as favorably on his character as he suggests.

B. Age

Brooks claims that his young age at the time of the crime warrants a reduced sentence. Our Supreme Court has said that “focusing on chronological age is a common shorthand for

measuring culpability, but for people in their teens and early twenties it is frequently not the end of the inquiry. There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.” *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2000).

Brooks cites two cases in which the courts considered the defendant’s young age in determining that a sentence was inappropriate, *Hill v. State*, 499 N.E.2d 1103 (Ind. 1986), and *Redmon v. State*, 734 N.E.2d 1088 (Ind. Ct. App. 2000). However, both cases involved less violent or serious crimes committed by the young defendants, and the defendants were given the maximum penalties for their crimes.¹ Although Brooks was eighteen years old at the time of his offenses with no prior felony convictions, the trial court did not impose the maximum sentence, and this case involves the deliberate and prolonged captivity, robbery, abuse, and murder of two elderly individuals. Additionally, Brooks’s history of gang membership, admission to past home robberies, and the fact that he wore a gold bracelet bearing the names of the McClendons’ children and grandchildren after the murders suggest that he is a more “hardened” young offender. The State points to the fact that, while incarcerated, Brooks continued to exhibit a criminal character as evidenced by recorded phone conversations in which he made references to past violent acts against others and willingness to commit future crimes. Brooks does not dispute the content of these recordings

¹ While Brooks notes in a parenthetical that the defendant in *Redmon* had an extensive criminal history, and the defendant in *Hill* lacked a prior criminal history, he does not develop an argument that his sentence warrants a reduction based on his lack of criminal history. Rather, Brooks focuses on the fact that he was young at the time of the commission of the crimes and that there “may be biological justification for treating an offender’s young age as mitigation.” Appellant’s Br. at 7.

on appeal.

Brooks also contends that his age merits consideration on biological grounds because some studies “suggest that the brain doesn’t fully mature until the early 20s in those parts that govern impulsiveness, foresight of consequences and other factors that often determine moral culpability.” Appellant’s Br. at 8. We find this argument unconvincing because the burglary, abuse, prolonged confinement, and murders of Milton and Ruby were not acts of mere impulse or aggression spiraling from circumstances like a confrontation. Brooks and Thompson had planned to rob the McClendons when they approached their home pretending to experience car trouble, and they had planned to murder them when they returned back to the house after robbing and confining them. Furthermore, Brooks and Thompson’s decision to go back and murder the McClendons to protect their identities demonstrates that they understood the potential consequences of being caught for robbery. If Brooks understood the consequences of robbery, then certainly he is capable of understanding the consequences of murder. Therefore, Brooks’s emphasis on his youth and immaturity are not convincing in light of the calculated, deliberate, and severe nature of the crimes.

C. Role in the Crimes

Finally, Brooks contends that Thompson committed most of the violent acts against the McClendons, and that his role was “secondary.” *Id.* at 9. The stipulated facts recited at Brooks’s guilty plea hearing do not specify who killed the McClendons, and they indicate that Thompson was the one who hit Milton over the head with a vase, pointed a gun at the McClendons on several occasions, and initiated the idea of going back to the McClendons’

home to execute them. In Indiana, there is no legal distinction for criminal liability between principal and accomplice, and the standard for reviewing the sentence for an accomplice “provides no categorical benefit to an actor by virtue of his having been charged as an accomplice.” *Herron v. State*, 808 N.E.2d 172, 179 (Ind. Ct. App. 2004). Brooks knowingly participated with Thompson throughout the commission of the crimes, including locking Ruby in the hallway closet, stealing the McClendons’ possessions, driving the car which held the McClendons in the trunk, listening to them beating on the trunk door when they stopped at a gas station, attempting to pawn valuables, and wearing a bracelet he had stolen with the McClendons’ children’s and grandchildren’s names on it. Although Brooks claimed during the sentencing hearing that he “felt cornered” and that “[Thompson] had a look in his eyes like he might have shot [him] if [he] did not go along with him,” Tr. at 186, Brooks does not argue that he was forced to perpetrate the crimes. Brooks’s role in the commission of the crimes does not militate toward a reduced sentence.

Based on the foregoing, we conclude that Brooks has failed to persuade us that his sentence was inappropriate in light of the nature of the offenses and his character. Therefore, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.